

7 April 1982

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## NOTE FOR THE RECORD

SUBJECT: Washington Post Editorial --  
Senator David Durenberger's (IR, MN) Plans to  
Introduce FOIA Legislation

1. At the request of the Deputy General Counsel, I undertook to obtain additional information concerning the Washington Post editorial of 7 April 1982, which mentioned that Senator Durenberger intended to introduce legislation concerning the effect of the new Executive order on classification on the Freedom of Information Act.

2. Conversation with Ed Levine, Senator Durenberger's designee on the SSCI staff, revealed that the Senator was particularly concerned about three areas in the new Executive order:

- The dropping of the identifiable damage standard;
- the elimination of the balancing test, and;
- the reclassification provisions.

3. Levine said that Senator Durenberger intended to introduce legislation which would require agencies to certify that material denied to FOIA/Privacy Act requesters would do "identifiable" damage to the national security, even if there was no "identifiable" standard involved in the decision to classify material in the first place. Similarly, Durenberger proposes to require that information requested under FOIA/Privacy be subjected to the balancing test before being denied. On the reclassification issue, Durenberger is concerned that reclassification be permitted only where material in the public domain is voluntarily returned to the government. The Senator reportedly hopes that this will be made clear in the implementing regulations under the new Executive order. If not, Durenberger's bill would include language specifying that this be the case.

4. Levine said that there was as yet no actual draft bill, and that he would show the draft to us when it was prepared.

[Redacted]  
Chief, Legislation Division, OGC

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cc: Deputy General Counsel

[Redacted] (Legislation Division, OGC)

[Redacted] (Chief, Information and Privacy Division, DDA)

[Redacted] (C/HL/LLD/OEXA)

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